

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD,
Plaintiff,

No. 2:05-cv-231

-v-

HONORABLE PAUL L. MALONEY

PATRICIA CARUSO, ET AL.,
Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION OVER OBJECTIONS

Plaintiff Heard filed a motion for a temporary restraining order and for a preliminary injunction. (Dkt. No. 317.) The magistrate judge issued a report recommending the motion be denied. (Dkt. No. 326.) Plaintiff filed objections. (Dkt. No. 332.)

After being served with a report and recommendation (R&R) issued by a magistrate judge, a party has fourteen days to file written objections to the proposed findings and recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A district court judge reviews *de novo* the portions of the R&R to which objections have been filed. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Only those objections that are specific are entitled to a *de novo* review under the statute. *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (per curiam) (holding the district court need not provide *de novo* review where the objections are frivolous, conclusive or too general because the burden is on the parties to “pinpoint those portions of the magistrate’s report that the district court must specifically consider”). The United States Supreme Court has held that the statute does not “positively require[] some lesser review by the district court when no objections are filed.” *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file an objection results in a waiver of the issue and the issue cannot be appealed. *Sullivan*, 431 F.3d at 984; *see also Arn*, 474 U.S. at 155 (upholding the Sixth Circuit’s practice). The district court judge may accept, reject, or modify, in whole or in

part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Having reviewed the motion, report, and objections, Plaintiff is not entitled to the relief he seeks. Plaintiff claims he has established a likelihood of success and he has supported his claims with factual evidence. As explained by the magistrate judge, the fact that there are unresolved factual issues does not establish that Plaintiff has established a likelihood of success on the merits. Plaintiff has not put forth the sort of evidence the Sixth Circuit Court of Appeals identified in its earlier opinion. *See Heard v. Caruso*, Nos. 08-1701, 08-1779, and 08-1820, slip op. at 11 and 17 (6th Cir. Aug 27, 2009) (identifying the evidence Plaintiff should seek through discovery in order to establish his procedural due process and dietary claims). In addition, the magistrate judge concluded the third and fourth elements a court considers before granting a motion for injunctive relief, the interests of third parties and the public, weigh in favor of denying Plaintiff's motion. Specifically, the magistrate judge concluded judicial interference with the administration of state prisons is necessarily disruptive of the prison environment and militates against the issuance of the sort of extraordinary relief sought by Plaintiff. Plaintiff has not objected to this conclusion.

For these reasons, **IT IS HEREBY ORDERED:**

1. The report and recommendation (Dkt. No. 326) is **ADOPTED** over objections as the opinion of this court;
2. Plaintiff's motion for a preliminary injunction and for a temporary restraining order (Dkt. No. 317) is **DENIED**.

Date: May 10, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge